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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,877	08/14/2001	Yehuda Afek	103376-3	8704
21125 7590 06/13/2008 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604				
EXAMINER				
JEAN, FRANTZ B				
ART UNIT		PAPER NUMBER		
2154				
NOTIFICATION DATE		DELIVERY MODE		
06/13/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@nutter.com

## Office Action Summary

**Application No.**

09/929,877

**Applicant(s)**

AFEK ET AL.

**Examiner**

Frantz B. Jean

**Art Unit**

2154

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10, 11, 13-16, 20, 33, 35 and 46-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-11, 13-16, 20, 33, 35, 46-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to the appeal brief filed on 03/11/08. Claims 1-8, 10-11, 13-16, 20, 33, 35, and 46-69 are pending in the application. The final rejection has been withdrawn in view of new found prior art.

The allowance of claim 55 has been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-8, 10-11, 13-16, 20, 33, 35, and 46-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Raz US PGPUB Number 2008/0016566. As per claim 1, Raz teaches s method of responding to an overload condition at a

network element ("victim") in a set of one or more potential victims on a network (abstract), the method comprising the steps of

responsively to an indication of an anomalous traffic condition, initiating diversion of traffic destined for the victim by a first set of one or more network elements external to the set of one or more potential victims to a second set of one or more network elements external to the set of one or more potential victims (abstract; paragraph 0007), the element(s) of the second set filtering traffic diverted in step A ("diverted traffic") and selectively passing a portion thereof to the victim (software arrangements such as firewall 121 blocks unauthorized access; par 0013 and 0018; see also web guard processor 201 at par 0019-0021).

As per claim 2, Raz teaches a method according to claim 1, wherein the initiating step includes effecting a path of traffic that differs from a path that traffic would otherwise take to the victim (abstract; par 0013 and 0018-0021).

As per claim 3, Raz teaches a method according to claim 1, wherein the filtering step includes detecting any of (i) a traffic pattern that differs from an expected pattern and (ii) traffic volume that differ from expected volume, the detecting step includes determining whether any of the traffic pattern and volume varies statistically significantly (see par 0007 and 0018-0021).

Art Unit: 2154

As per claim 4, Raz teaches a method according to claim 1, wherein the filtering step includes detecting suspected malicious traffic (abstract and par 0007).

As per claim 5, Raz teaches a method according to claim 4, wherein the detecting step includes detecting packets with spoofed source addresses (see par 0007 and 0017).

As per claim 6, Raz teaches a method according to claim 1, wherein the filtering step includes detecting traffic requiring a selected service from the victim (abstract; par 0007 and 0018-0021).

As per claim 7, Raz teaches a method according to claim 6, wherein the filtering step includes discarding traffic not requiring the selected service from the victim (par 0018-0021)

As per claim 8, Raz teaches a method according to claim 7, wherein the filtering step includes discarding any of UDP (which is a connectionless mode protocol) and ICMP (which is an integral part of IP) packet traffic (see par 0004, 0007 and 0017).

As per claim 10, Raz teaches a method according to claim 1, comprising operating one or more elements of the first set at points on the network around the set of one or more potential victims (par 0018-0021).

Art Unit: 2154

As per claim 11, Raz teaches a method according to claim 10, comprising operating one or more elements of the second set any of adjacent to or external to one or more elements of the first set (par 0018-0021).

As per claim 13, Raz teaches a method according to claim 10, wherein the anomalous traffic condition is indicative of a distributed denial of service (DDoS) attack (0007, 0016 and 0017).

As per claim 14, Raz teaches a method according to claim 10, comprising selectively activating the one or more elements of the first set by declaring a network address of the victim to be close in network distance to one or more elements of the second set (par 0013 and 0018-0021).

As per claim 15, Raz teaches a method according to claim 10, comprising associating the victim with first and second addresses, and wherein the filtering step includes discarding traffic received external to an area defined by the points directed to the first address, and passing to the victim traffic received external to an area directed to the second address (par 0006-0007 and 0018).

As per claim 16, Raz teaches a method according to claim 10, wherein the diverting step includes redirecting traffic using Policy Based Routing (par 0018).

Art Unit: 2154

As per claim 20, Raz teaches a method according to claim 5, wherein detecting the packets with spoofed source addresses comprises executing a verification protocol with sources of the diverted traffic, and wherein the passing step includes passing to the victim traffic from a source that correctly complies with the verification protocol (par 0007, 0013 and 0018-0021).

As per claim 33, Raz teaches a method according to claim 1, wherein the filtering step includes statistically measuring any of a traffic pattern and volume so as to identify any of a source and a type of the overload condition (0018).

As per claim 35, Raz teaches a method according to claim 33, comprising determining any of the traffic pattern and volume during a period when the victim is not in the overload condition, for comparison with any of the traffic pattern and volume in the filtering step upon detecting the anomalous traffic condition (0007, 0018-0021).

As per claims 46-69, Raz teaches the entire concept of the invention as claimed. Furthermore, the concept of these claims have been discussed in the rejection of claims 1-8, 10-11, 13-16, 20, 33, 35 above. Therefore, they are rejected under the same rationale.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

Art Unit: 2154

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantz B. Jean/  
Primary Examiner, Art Unit 2154